

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte SHIRLEY M. REEDY

Appeal No. 2002-1645
Application No. 09/281,553

ON BRIEF

Before ABRAMS, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 15 and 17 to 20.¹ The rejections of claim 16, the only other claim pending in this application, have been vacated by the examiner (answer, p. 2).

We AFFIRM-IN-PART.

¹ Claims 1 and 14 were amended subsequent to the final rejection.

BACKGROUND

The appellant's invention relates to a walking aid adapted to support a patient during physical therapy (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Engelhart	4,312,505	Jan. 26, 1982
Sorrell et al. (Sorrell)	5,271,422	Dec. 21, 1993
Fochs	5,443,304	Aug. 22, 1995
Haruyama	5,803,103	Sept. 8, 1998
		(filed June 23, 1997)

Claims 1 to 10, 12 to 15, 18 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Engelhart.

Claims 12 to 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sorrell.

Claims 1, 2, 5 and 10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Haruyama.

Claims 11, 17 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Engelhart in view of Fochs.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 12, mailed October 19, 2001) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 11, filed July 30, 2001) and reply brief (Paper No. 13, filed January 24, 2002) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection based on Engelhart

We sustain the rejection of claims 1, 2, 5 to 10, 12 and 13 under 35 U.S.C. § 102(b) as being anticipated by Engelhart but not the rejection claims 3, 4, 14, 15, 18 and 19.

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As stated in In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) (quoting Hansgirk v. Kemmer, 102 F.2d 212, 214, 40 USPQ 665, 667 (CCPA 1939)) (internal citations omitted):

Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. If, however, the disclosure is sufficient to show that the natural result flowing from the operation as taught would result in the performance of the questioned function, it seems to be well settled that the disclosure should be regarded as sufficient.

Thus, a prior art reference may anticipate when the claim limitation or limitations not expressly found in that reference are nonetheless inherent in it. See In re Oelrich, 666 F.2d at 581, 212 USPQ at 326; Verdegaal Bros., Inc. v. Union Oil Co., 814 F.2d 628, 630, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates. See In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). However, inherency is not necessarily coterminous with the knowledge of those of ordinary skill in the art. See Mehl/Biophile Int'l Corp. v. Milgraum, 192 F.3d 1362, 1365, 52 USPQ2d 1303, 1305-06 (Fed. Cir. 1999); Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946-47 (Fed. Cir. 1999). Where the result is a necessary consequence of what was deliberately intended, it is of no import that the

prior art inventors did not appreciate the results. See W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983).

The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Engelhart

Engelhart's invention relates generally to walking aids for invalids and more particularly to an improved walker which enables a maximum of walking exercise by an invalid with respiratory and/or other problems while requiring a minimum of effort without the constant pressure of an attendant. One object of Englehart's invention was to provide an improved wheeled walker for invalids which enables I.V. feeding or the taking of oxygen by the patient while walking with the aid of the walker while a second object was to provide an improved walker which enables a respiratory patient to assume his most comfortable position--leaning slightly forward while standing and

leaning downwardly on something with his forearms--thus avoiding upward pressure on his diaphragm.

In the first embodiment of Englehart's invention (see Figures 1-4), the walker comprises a strong tubular, three sided, and substantially waist high frame of aluminum or steel having lower side bars 12 and 14 rigidly connected to a front bar 16 and all being braced by diagonal bars 18. The lower frame is mounted on rear wheels 20 and front caster wheels 22 for steering. The frame which is open at the rear, also includes inverted generally U-shaped side bars 24 and 26 rigidly connected at the front by a cross bar 28 and at the top forward portion by a cross bar 30. The tops of the bars 24 and 26 include padded hand grips 32 of naugahide or other suitable washable material. A tubular bracket 34 for the reception of a portable oxygen bottle is mounted on the front bar 16 and is fixed to it and to the upper front bar 28. A second tubular bracket 36 for the reception of an I.V. pole is fixed to the upper front of the side bar 24.

An important feature of Englehart's invention resides in the provision of a padded leaning rest 38 and its forwardly projecting U-shaped safety hand hold bar 40. The hand hold bar 40 is covered in naugahide, etc. and provided with brake control handles 42 which individually control bicycle-type rear wheel brakes (not shown) by means of

cables 44. The padded leaning rest 38 and its attached hand hold bar 40 is vertically adjustable by means of four depending tubular posts 46 each of which includes a plurality of vertically spaced, diametrically opposite apertures 48. The four posts are received in tubular sockets 50 which are similarly positioned and rigidly fixed to the front top portions of the side bars 24 and 26. The sockets 50 are each provided with one pair of diametrically opposed apertures 52 for the reception of a bolt 54 inserted therethrough and through a pair of the post apertures 48 when the leaning rest 38 is in its desired position of vertical adjustment. Thus, the leaning rest is readily adjustable to the height of the invalid user.

The falling of a patient due to fainting, fatigue, etc. is prevented by the use of a strap 56 fixed at its ends to the leaning rest 38 (see Figure 1) and at its midpoint to a waist-encircling buckled belt 58. The patient is further provided with a second belt 60 to ensure its vertical position when unconscious or too weak to stand. The belt 60 passes around the waist encircling belt 58 (see Figure 2) and is attached to and centrally of an inverted U-shaped rear cross bar 62 whose two lower ends 64 are detachably received in tubular brackets 66 fixed to the top rear of the side bars 24 and 26. When not in use, the rear cross bar 62 and the belt 60 may be removed and placed on the front of the walker 10.

Claim 1

Claim 1 reads as follows:

A therapeutic walking aid adapted to support a patient in an upright position, said walking aid comprising:
first and second spaced apart side portions defining an open interior space sized to accommodate the patient, and each having an arm support adapted to support the elbow and the forearm of a standing patients; and
a back portion extending between said first and second side portions and having a back support extending upwardly to an elevation above said arm supports and adapted to brace the upper back of a standing patient;
said arm supports and said back support cooperating to support the patient's arms and upper body when the standing patient is positioned within said interior space in the upright position.

In our view, claim 1 is readable on the walker disclosed in Figures 1-4 of Engelhart, thus establishing a prima facie case of anticipation. In that regard, claim 1 reads on Engelhart's walker as follows: A therapeutic walking aid adapted to support a patient in an upright position (the walker shown in Figures 1-4 of Engelhart), said walking aid comprising: first and second spaced apart side portions (side bars 24 and 26) defining an open interior space sized to accommodate the patient (see Figures 1 and 2 of Engelhart), and each having an arm support adapted to support the elbow and the forearm of a standing patients (Engelhart's grips 32 are adapted to (i.e., capable of providing) support to the elbow and the forearm of a suitably sized standing patient (e.g., a patient smaller than the patient depicted in Figure 2 of Engelhart)); and a back portion (Engelhart's rest 38, cross bars 28 and 30, etc.) extending between said first

and second side portions and having a back support (Engelhart's rest 38) extending upwardly to an elevation above said arm supports and adapted to brace the upper back of a standing patient (Engelhart's rest 38 does extend upwardly to an elevation above the grips 32 and is adapted to (i.e., capable of providing) brace the upper back of a suitably sized standing patient (e.g., a patient smaller than the patient depicted in Figure 2 of Engelhart)); said arm supports and said back support cooperating to support the patient's arms and upper body when the standing patient is positioned within said interior space in the upright position (Engelhart's rest 38 and grips 32 are capable of cooperating to support the arms and upper body of a suitably sized standing patient (e.g., a patient smaller than the patient depicted in Figure 2 of Engelhart) when the suitably sized standing patient is positioned within the interior space in an upright position).

A patent applicant is free to recite features of an apparatus either structurally or functionally. See In re Swinehart, 439 F.2d 210, 212, 169 USPQ 226, 228 (CCPA 1971) (" [T]here is nothing intrinsically wrong with [defining something by what it does rather than what it is] in drafting patent claims."). Yet, choosing to define an element functionally, i.e., by what it does, carries with it a risk. As the court stated in Swinehart, 439 F.2d at 213, 169 USPQ at 228:

where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may,

in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied on.

See also In re Hallman, 655 F.2d 212, 215, 210 USPQ 609, 611 (CCPA 1981); In re Ludtke, 441 F.2d 660, 663-64, 169 USPQ 563, 565-67 (CCPA 1971).

At this point, the burden has shifted to the appellant to show that the prior art structure of Engelhart does not inherently possess the functionally/capability defined limitations of the claimed apparatus. See In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990); In re King, 801 F.2d at 1327, 231 USPQ at 138-39; In re Best, 562 F.2d 1252, 1254-55, 195 USPQ 430, 433 (CCPA 1976). The appellant has failed to do so.

For the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 102(b) as being anticipated by Engelhart is affirmed.

Claims 2 and 5 to 10

The appellant has grouped claims 1, 2 and 5 to 10 as standing or falling together.² Thereby, in accordance with 37 CFR § 1.192(c)(7), claims 2 and 5 to 10 fall

² See page 2 of the appellant's brief.

with claim 1. Thus, it follows that the decision of the examiner to reject claims 2 and 5 to 10 under 35 U.S.C. § 102(b) as being anticipated by Engelhart is also affirmed.

Claims 3 and 4

Claim 3 adds to parent claim 1 the further limitation that the back portion "defines a back opening sized and shaped to permit at least partial wheelchair access into said interior space."

The back portion of Engelhart as we have applied it to parent claim 1 does not have a back opening sized and shaped to permit at least partial wheelchair access into the interior space due to bar 16 and cross bars 28 and 30. Moreover, it is our view that it is sheer speculation as to whether Engelhart's inverted U-shaped cross bar 62 is capable of bracing the upper back of a standing patient. Accordingly, the subject matter of claim 3 is not met by Engelhart.

For the reasons set forth above, the decision of the examiner to reject claim 3, and claim 4 dependent thereon, under 35 U.S.C. § 102(b) as being anticipated by Engelhart is reversed.

Claim 12

Claim 12 reads as follows:

A wheelchair accessible walking aid comprising:
first and second spaced apart side portions defining an interior space which can be occupied by a patient in an upright position; and
a back portion extending between said first and second side portions and defining a back opening shaped to permit wheelchair access into said interior space so that a wheelchair can be at least partially introduced into said interior space through said back opening to receive the patient for removal from said interior space.

In our view, claim 12 is readable on the walker disclosed in Figures 1-4 of Engelhart, thus establishing a prima facie case of anticipation. In that regard, claim 12 reads on Engelhart's walker as follows: A wheelchair accessible walking aid (the walker shown in Figures 1-4 of Engelhart) comprising: first and second spaced apart side portions (side bars 24 and 26) defining an interior space which can be occupied by a patient in an upright position (see Figures 1 and 2 of Engelhart); and a back portion extending between said first and second side portions (Engelhart's inverted U-shaped cross bar 62) and defining a back opening (the space directly below the cross-piece of the inverted U-shaped cross bar 62) shaped to permit wheelchair access into said interior space so that a wheelchair can be at least partially introduced into said interior space through said back opening to receive the patient for removal from said interior space (Engelhart's back opening is capable of receiving a wheelchair since Engelhart's

side bars 12 and 14 appear to be sufficiently spaced apart to permit at least partial access into the interior space of the walker by the smallest width wheelchair).

At this point, the burden has shifted to the appellant to show that the prior art structure of Engelhart does not inherently possess the functionally/capability defined limitations of the claimed apparatus. The appellant has failed to do so.

For the reasons set forth above, the decision of the examiner to reject claim 12 under 35 U.S.C. § 102(b) as being anticipated by Engelhart is affirmed.

Claim 13

The appellant has grouped claims 12 and 13 as standing or falling together.³ Thereby, in accordance with 37 CFR § 1.192(c)(7), claim 13 falls with claim 12. Thus, it follows that the decision of the examiner to reject claim 13 under 35 U.S.C. § 102(b) as being anticipated by Engelhart is also affirmed.

Claims 14 and 15

Claim 14 reads as follows:

³ See page 2 of the appellant's brief.

The walking aid according to claim 12, wherein an arm support extends along each of said first and second side portions, said walking aid further comprising a back support extending between said first and second side portions, said arm supports adapted to support the elbows and forearms of the patient and said back support adapted to support the upper back of the patient.

It is our view that it is sheer speculation as to whether Engelhart's inverted U-shaped cross bar 62 is capable of supporting the upper back of a patient. Accordingly, the subject matter of claim 14 is not met by Engelhart.

For the reasons set forth above, the decision of the examiner to reject claim 14, and claim 15 dependent thereon, under 35 U.S.C. § 102(b) as being anticipated by Engelhart is reversed.

Claims 18 and 19

Claim 18 reads as follows:

A wheelchair accessible walking aid comprising:
first and second spaced apart side portions defining an interior space which can be occupied by a patient in an upright position, and each having an arm support;
wheels connected for providing mobility of said walking aid with respect to a floor surface; and
a back portion extending between said first and second side portions and having (a) a back support extending to an elevation above said arm supports, said arm supports and said back support cooperating to support the patient's arms and upper body when the patient is positioned within said interior space, and (b) a back member removable from said walking aid or moveable with respect to said walking aid so as to define a back opening in said back portion

shaped to permit at least partial wheelchair access into said interior space so that a wheelchair can be at least partially introduced into said interior space through said back opening to receive the patient to facilitate removal of the patient from said interior space.

It is our view that it is sheer speculation as to whether Engelhart's inverted U-shaped cross bar 62 is capable of supporting the upper body of a patient. Accordingly, the subject matter of claim 18 is not met by Engelhart.

For the reasons set forth above, the decision of the examiner to reject claim 18, and claim 19 dependent thereon, under 35 U.S.C. § 102(b) as being anticipated by Engelhart is reversed.

The anticipation rejection based on Sorrell

We will not sustain the rejection of claims 12 to 15 under 35 U.S.C. § 102(b) as being anticipated by Sorrell.

Sorrell's invention relates to safety walkers for medical patients, such as those with Parkinson's Disease, and in particular to walkers having resistance to backward falls and injury avoidance in the event of a backward fall. Figure 1 is a perspective view of walker 4 having a flexible mesh seat 5. The walker has tubular parallel side frames 8 and 9 of similar strength plastic or metal connected by screw or plastic bonding to an

open ended rectangular rear frame 10 which is bent at radius 17 to form to rear legs 24 and 25. The top of rear frame 10 is bent away from the patient. An open ended rectangular frame bar 18 connects to front legs 20 and 21 by slightly angulated T-joints 42 and 43 and to the rear frame 10 by screws or plastic bonds providing structural strength. The upper horizontal segment of rear frame 10 constitutes the rear upper cross member of the walker structure. The rear segment of frame bar 18 between rear legs 24 and 25 constitutes the rear lower cross member of the walker structure. A U-shaped bar 19 bridges the rear legs 24 and 25 and the lower bar 18, it is connected by screw or plastic bond at each contact site. Front legs 20 and 21 connect to side frames 8 and 9 by T-joints 40 and 41. Handles 12 and 13 extend up and in from side bars 8 and 9.

Claim 12 (reproduced above) is not met by Sorrell. Specifically, the claimed back portion defining a back opening shaped to permit wheelchair access into the interior space so that a wheelchair can be at least partially introduced into the interior space through the back opening to receive the patient for removal from the interior space is not taught by Sorrell. From the cryptic rejection of this claim (answer, p. 5), it appears that the examiner believes that this back opening limitation is met by Sorrell's rear frame 10. We do not agree. The presence of the rear segment of frame bar 18 between rear legs 24 and 25, the U-shaped bar 19 which bridges the rear legs 24 and

25 and the seat 5 would prevent any wheelchair from being introduced into the interior space through the opening defined by Sorrell's open ended rectangular rear frame 10 which is bent at radius 17 to form to rear legs 24 and 25. Accordingly, the subject matter of claim 12 is not met by Sorrell.

For the reasons set forth above, the decision of the examiner to reject claim 12, and claims 13 to 15 dependent thereon, under 35 U.S.C. § 102(b) as being anticipated by Sorrell is reversed.

The anticipation rejection based on Haruyama

We sustain the rejection of claims 1, 2, 5 and 10 under 35 U.S.C. § 102(e) as being anticipated by Haruyama.

Haruyama's invention relates to a walker used to help a handicapped person having difficulty in walking while supporting his or her body. An embodiment of Haruyama's walker is shown in Figures 1, 2 and 5. The walker comprises a pair of right and left leg members 1, and a support member 2 mounted on top of the leg members 1. Each leg member 1 comprises a wheel carriage 3 carrying a front wheel 4 pivotable about a vertical shaft 6, and a rear wheel 5, and two legs 7 vertically extending from the inner side of the wheel carriage 3. The support member 2 comprises a pair of right and

left armrests 10, and four vertical shafts 8 connected to the front and rear ends of the armrests 10 by mounting rods 9 and coupled to the respective legs 7, and plate members provided between the shafts 8 at one end of the support member 2 and between the two shafts 8 on either side of the support member. A support rod 11 extends widthwise over the armrests 10 at said one end of the support member 2.

The shafts 8 are tubular members having bottom openings into which are slidably inserted the respective legs 7. The legs 7 and shafts 8 are fixed together by clamps 12. By loosening the clamps 12, the support member 2 can be raised or lowered relative to the leg members 1 or pulled upwardly out of the leg members 1. The armrests 10 are slidable relative to the mounting rods 9 and can be fixed to the mounting rods 9 by clamps 13. By loosening the clamps 13, the armrests 10 can be moved in the width direction of the support member 2. According to the build and posture of the user, it is possible to adjust the height of the armrests 10 by raising and lowering the support member 2 relative to the leg members 1 and the distance between the armrests 10 by moving them in the width direction of the support member 2.

When this walker is to be used by a person with a lighter degree of walking problem, who can walk substantially in an erect posture, the support member 2 is pulled up out of the leg members 1, turned 180° horizontally, and coupled to the leg members

1 again so that the support rod 11 is positioned at the back of the walker (i.e., the walker is converted from that shown in Figure 1 to that shown in Figure 5). In this arrangement, the support rod 11 is used to support the back of the user.

In our view, claim 1 is readable on the walker disclosed in Figures 1, 2 and 5 of Haruyama in the same manner as Engelhart, thus establishing a prima facie case of anticipation. In that regard, claim 1 reads on Haruyama's walker as follows: A therapeutic walking aid adapted to support a patient in an upright position (the walker shown in Figure 5 of Haruyama), said walking aid comprising: first and second spaced apart side portions (right and left leg members 1, vertical shafts 8 and armrests 10) defining an open interior space sized to accommodate the patient (see Figure 5), and each having an arm support adapted to support the elbow and the forearm of a standing patients (armrests 10 are adapted to (i.e., capable of providing) support to the elbow and the forearm of a suitably sized standing patient (e.g., a patient smaller than the patient depicted in Figure 5)); and a back portion (support rod 11) extending between said first and second side portions and having a back support (support rod 11) extending upwardly to an elevation above said arm supports and adapted to brace the upper back of a standing patient (support rod 11 does extend upwardly to an elevation above the armrests 10 and is adapted to (i.e., capable of providing) brace the upper back of a suitably sized standing patient (e.g., a patient smaller than the patient

depicted in Figure 5)); said arm supports and said back support cooperating to support the patient's arms and upper body when the standing patient is positioned within said interior space in the upright position (support rod 11 and armrests 10 are capable of cooperating to support the arms and upper body of a suitably sized standing patient (e.g., a patient smaller than the patient depicted in Figure 5) when the suitably sized standing patient is positioned within the interior space in an upright position).

At this point, the burden has shifted to the appellant to show that the prior art structure of Haruyama does not inherently possess the functionally/capability defined limitations of the claimed apparatus. The appellant has failed to do so.

For the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 102(e) as being anticipated by Haruyama is affirmed. The appellant has grouped claims 1, 2, 5 and 10 as standing or falling together.⁴ Thereby, in accordance with 37 CFR § 1.192(c)(7), claims 2, 5 and 10 fall with claim 1. Thus, it follows that the decision of the examiner to reject claims 2, 5 and 10 under 35 U.S.C. § 102(e) as being anticipated by Haruyama is also affirmed.

⁴ See page 2 of the appellant's brief.

The obviousness rejection

We sustain the rejection of claim 11 under 35 U.S.C. § 103 as being unpatentable over Engelhart in view of Fochs but not the rejection of claims 17 and 20.

Claim 11

Dependent claim 11 has not been separately argued by the appellant. In fact, the appellant (brief, p. 2) has stated that claim 11 stands or falls with claim 1. Accordingly, claim 11 will be treated as falling with parent claim 1. See In re Young, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987); and In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978). Thus, it follows that the examiner's rejection of claim 11 under 35 U.S.C. § 103 is also sustained.

Claims 17 and 20

Claim 17, dependent from claim 14, is patentable over the combined teachings of the applied prior art⁵ since the limitation of parent claim 14 not met by Engelhart for the reasons explained above is not suggested by the applied prior art. Likewise, claim 20, dependent from claim 18, is patentable over the combined teachings of the applied

⁵ The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

prior art since the limitation of parent claim 18 not met by Engelhart for the reasons explained above is not suggested by the applied prior art. Thus, it follows that the examiner's rejection of claims 17 and 20 under 35 U.S.C. § 103 is not sustained.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 10, 12 to 15, 18 and 19 under 35 U.S.C. § 102(b) as being anticipated by Engelhart is affirmed with respect to claims 1, 2, 5 to 10, 12 and 13 and reversed with respect to claims 3, 4, 14, 15, 18 and 19; the decision of the examiner to reject claims 12 to 15 under 35 U.S.C. § 102(b) as being anticipated by Sorrell is reversed; the decision of the examiner to reject claims 1, 2, 5 and 10 under 35 U.S.C. § 102(e) as being anticipated by Haruyama is affirmed; and the decision of the examiner to reject claims 11, 17 and 20 under 35 U.S.C. § 103 as being unpatentable over Engelhart in view of Fochs is affirmed with respect to claim 11 and reversed with respect to claims 17 and 20.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

NEAL E. ABRAMS
Administrative Patent Judge

JOHN P. McQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

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